



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 5TH DAY OF OCTOBER 2023 / 13TH ASWINA, 1945

WP (C) NO. 29855 OF 2023

PETITIONER:

MR.GOPARAJ GOPALAKRISHNAN PILLAI
AGED 46 YEARS
PROPRIETOR, M/S TAURUS COMMUNICATION, 11/307,
PUTHIYAKAVU, MAVELIKKARA, ALAPUZHA, KERALA, PIN -
690558

BY ADVS.
K.LATHA
JOMTON F. PAYANKAN

RESPONDENTS:

- 1 THE STATE TAX OFFICER-1
KERALA STATE GOODS AND SERVICES TAX DEPARTMENT, MINI
CIVIL STATION, COURT ROAD, MAVELIKARA ALAPUZHA SECOND
CIRCLE, .THRIPUNITHURA. 682301, PIN - 690101
- 2 JOINT COMMISSIONER (APPEALS)
STATE GOODS AND SERVICES DEPARTMENT , KOTTAYAM, PIN -
686002

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.09.2023, THE COURT ON 05.10.2023 DELIVERED THE FOLLOWING:



DINESH KUMAR SINGH, J.

W.P.(C) No. 29855 of 2023

Dated: 5th October 2023

JUDGMENT

The petitioner has approached this Court with the present writ petition impugning Ext.P1 Show Cause Notice and Ext.P1(A) assessment order whereby the petitioner's claim for input tax credit to an extent of Rs.19,830/- has been proposed to be disallowed vide Ext.P1 show cause notice and vide Ext.P1(A) order, it has been disallowed. Interest and penalty have been imposed to an extent of which Rs.12,742/-and Rs.20,000/- respectively along with disallowed input tax credit have been ordered to be paid by the petitioner (total amount is Rs.52,572/-).

2. The petitioner is a registered dealer under GIST Act 2017 with GSTIN No.32ANPPP5159DIZV. The petitioner in its return of GST for the year 2017-2018 had availed and utilised (including both CGST & SGST) allegedly excess input tax credit of Rs.33,05,038/-. Since the ITC as per Form GSTR-2A was Rs.65,39,776/-, whereas the ITC availed and utilised as per Form



GSTR-3B was Rs.98,44,815/-, while comparing the form GSTR-2A and 3B, it appears that the petitioner had availed excess input tax credit to an extent of Rs.33,05,038/-. The petitioner was issued show cause notice dated 26.08.2022 to which he filed reply on 3rd October 2020. In response to the notice issued, the petitioner stated that he mistakenly entered SGST of Rs.36,47,624.24 instead of Rs.3,64,764.24 in GSTR-3B of December 2017 (difference amount of Rs.32,82,860/-). The petitioner also submitted that he had not utilised ITC till the said date. Excess input tax credit of Rs.22,922.22 was deducted in the GSTR-3B of August 2018 (Financial Year 2018-2019).

3. The Assessing Officer held that the tax payer would be entitled to avail ITC only if the tax charged on such supply is remitted by the counterpart to the Government. In the present case, the supplier/dealer had not remitted tax collected on the supply nor uploaded such supply details in his return. It was held that the petitioner was not entitled to avail ITC on such supplies for which the supplier/dealer had not remitted the tax collected on the supply. An intimation of liability in Part-A of Form GST DRC-01A under Section 73(5) of the Act was issued to the



petitioner. It appears that the petitioner did not file any reply to the said intimation. The Assessing Officer taking note of the Circular No.7/2021 dated 7th November 2021 issued by the Commissioner of State Goods and Services Tax Department, Kerala, concluded that the petitioner was eligible to utilise ITC to the tune of Rs.65,61,906/- during 2017-2018 and thereby availed and utilised Rs.19,830/-, excess input tax credit.

4. The question whether input tax credit to a dealer would be denied merely on the ground of non-remittance of tax by the supplier/dealer on the goods/services supplied to the assessee as the same tax is not reflected in the Form GSTR-2A, would be enough to deny the claim of input tax credit to the assessee has been considered in the judgment dated 12th September 2023 passed in WPC No.29769 of 2023 in the case of ***Diya Agencies v State Tax Officer.***

5. Paragraph 8 of the said judgment reads as under:

8. In view thereof, I find that the impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax



credit. Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit. After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law.

6. Considering the aforesaid judgment, the present Writ Petition is allowed. Impugned order Ext.P1(A) for denial of input tax credit to the petitioner to the extent of 19,830/- is hereby set aside and the matter is remitted back to the Assessing Office to give one opportunity to the petitioner for giving evidence and documents in support of his claim for input tax credit which has been denied vide order Ext.P1(A). If on examination of the evidence and documents submitted by the petitioner, the Assessing Officer is satisfied that the claim is bonafide and genuine, the petitioner should be given credit of input tax which has been denied by the order, Ext.P1(A).

7. The petitioner is directed to appear before the Assessing Officer within ten days with all evidence in his possession to



prove his claim for input tax credit of Rs.19830/- which had been denied to the petitioner. After examination of the evidence and documents placed by the petitioner/assessee, the Assessing Officer is directed to pass fresh orders in accordance with law.

With the aforesaid direction, the Writ Petition is disposed of.

sd/-DINESH KUMAR SINGH
JUDGE

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APPENDIX OF WP (C) 29855/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE SHOW CAUSE NOTICE U/S 73 (1) OF CGST / SGST ACT 2017 DATED 26-08-2022 FOR THE FINANCIAL YEAR 2017-2018 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER
- Exhibit P1(A) THE TRUE COPY OF THE ORDER U/S 73 OF CGST / SGST ACT 2017 DATED 17-11-2022 FOR THE FINANCIAL YEAR 2017-2018 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER
- Exhibit P2 THE TRUE COPY OF THE STAY ORDER IN W.P (C) 40330 OF 2022 DATED 30TH DAY OF JANUARY MANY 2023

